

Federal Highway Administration, DOT

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the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

(b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

(c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

II. Implementation of Clean Air Act.

(a) By signing this bid, the bidder will be deemed to have stipulated as follows:

(1) That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as by Pub. L. 91-604), Executive order 11738, and regulations in implementation thereof (40 CFR part 15, is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

(2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

PART 634—WORKER VISIBILITY

Sec.

634.1 Purpose.

634.2 Definitions.

634.3 Rule.

634.4 Compliance date.

AUTHORITY: 23 U.S.C. 101(a), 109(d), 114(a), 315, and 402(a); Sec. 1402 of Pub. L. 109-59; 23 CFR 1.32; and 49 CFR 1-48(b).

SOURCE: 71 FR 67800, Nov. 24, 2006, unless otherwise noted.

§ 634.1 Purpose.

The purpose of the regulations in this part is to decrease the likelihood of worker fatalities or injuries caused by motor vehicles and construction vehicles and equipment while working within the right-of-way on Federal-aid highways.

§ 634.2 Definitions.

Close proximity means within the highway right-of-way on Federal-aid highways.

High-visibility safety apparel means personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage, and that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear." This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 and is on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. It is available for inspection and copying at the Federal Highway Administration, 400 Seventh Street, SW., Room 4232, Washington, DC, 20590, as provided in 49 CFR Part 7. This publication is available for purchase from the International Safety Equipment Association (ISEA) at 1901 N. Moore Street, Suite 808, Arlington, VA 22209, <http://www.safetyequipment.org>.

Workers means people on foot whose duties place them within the right-of-way of a Federal-aid highway, such as highway construction and maintenance forces; survey crews; utility crews; responders to incidents within the highway right-of-way; firefighters and other emergency responders when they are not directly exposed to flame, fire, heat, and/or hazardous materials; and law enforcement personnel when directing traffic, investigating crashes, and handling lane closures, obstructed

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roadways, and disasters within the right-of-way of a Federal-aid highway.

[71 FR 67800, Nov. 24, 2006, as amended at 73 FR 70596, Nov. 21, 2008]

§ 634.3 Rule.

All workers within the right-of-way of a Federal-aid highway who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel. Firefighters or other emergency responders working within the right-of-way of a Federal-aid highway and engaged in emergency operations that directly expose them to flame, fire, heat, and/or hazardous materials may wear retroreflective turnout gear that is specified and regulated by other organizations, such as the National Fire Protection Association. Firefighters or other emergency responders working within the right-of-way of a Federal-aid highway and engaged in any other types of operations shall wear high-visibility safety apparel.

[73 FR 70596, Nov. 21, 2008]

§ 634.4 Compliance date.

States and other agencies shall comply with the provisions of this Part no later than November 24, 2008.

PART 635—CONSTRUCTION AND MAINTENANCE

Subpart A—Contract Procedures

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- 635.101 Purpose.
- 635.102 Definitions.
- 635.103 Applicability.
- 635.104 Method of construction.
- 635.105 Supervising agency.
- 635.106 Use of publicly owned equipment.
- 635.107 Participation by disadvantaged business enterprises.
- 635.108 Health and safety.
- 635.109 Standardized changed condition clauses.
- 635.110 Licensing and qualification of contractors.
- 635.111 Tied bids.
- 635.112 Advertising for bids and proposals.
- 635.113 Bid opening and bid tabulations.
- 635.114 Award of contract and concurrence in award.
- 635.115 Agreement estimate.

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- 635.116 Subcontracting and contractor responsibilities.
- 635.117 Labor and employment.
- 635.118 Payroll and weekly statements.
- 635.119 False statements.
- 635.120 Changes and extra work.
- 635.121 Contract time and contract time extensions.
- 635.122 Participation in progress payments.
- 635.123 Determination and documentation of pay quantities.
- 635.124 Participation in contract claim awards and settlements.
- 635.125 Termination of contract.
- 635.126 Record of materials, supplies, and labor.
- 635.127 Agreement provisions regarding overruns in contract time.

Subpart B—Force Account Construction

- 635.201 Purpose.
- 635.202 Applicability.
- 635.203 Definitions.
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Subpart C—Physical Construction Authorization

- 635.301 Purpose.
- 635.303 Applicability.
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- 635.401 Purpose.
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- 635.405 Applicability.
- 635.407 Use of materials made available by a public agency.
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- 635.411 Material or product selection.
- 635.413 Guaranty and warranty clauses.
- 635.417 Convict produced materials.

AUTHORITY: Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041 (a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

EDITORIAL NOTE: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

Subpart A—Contract Procedures

SOURCE: 56 FR 37004, Aug. 2, 1991, unless otherwise noted.